Supreme Court, U.S.
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No. 98-372

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

SOFIA E. FOWLER,

Petitioner,

vs.

THE BOARD OF COUNTY COMMISSIONERS
OF POTTWATOMIE COUNTY, OKLAHOMA,

Respondents.

On Petition for a Writ of Certiorari
To The Oklahoma Supreme Court

RESPONDENTS' BRIEF IN OPPOSITION

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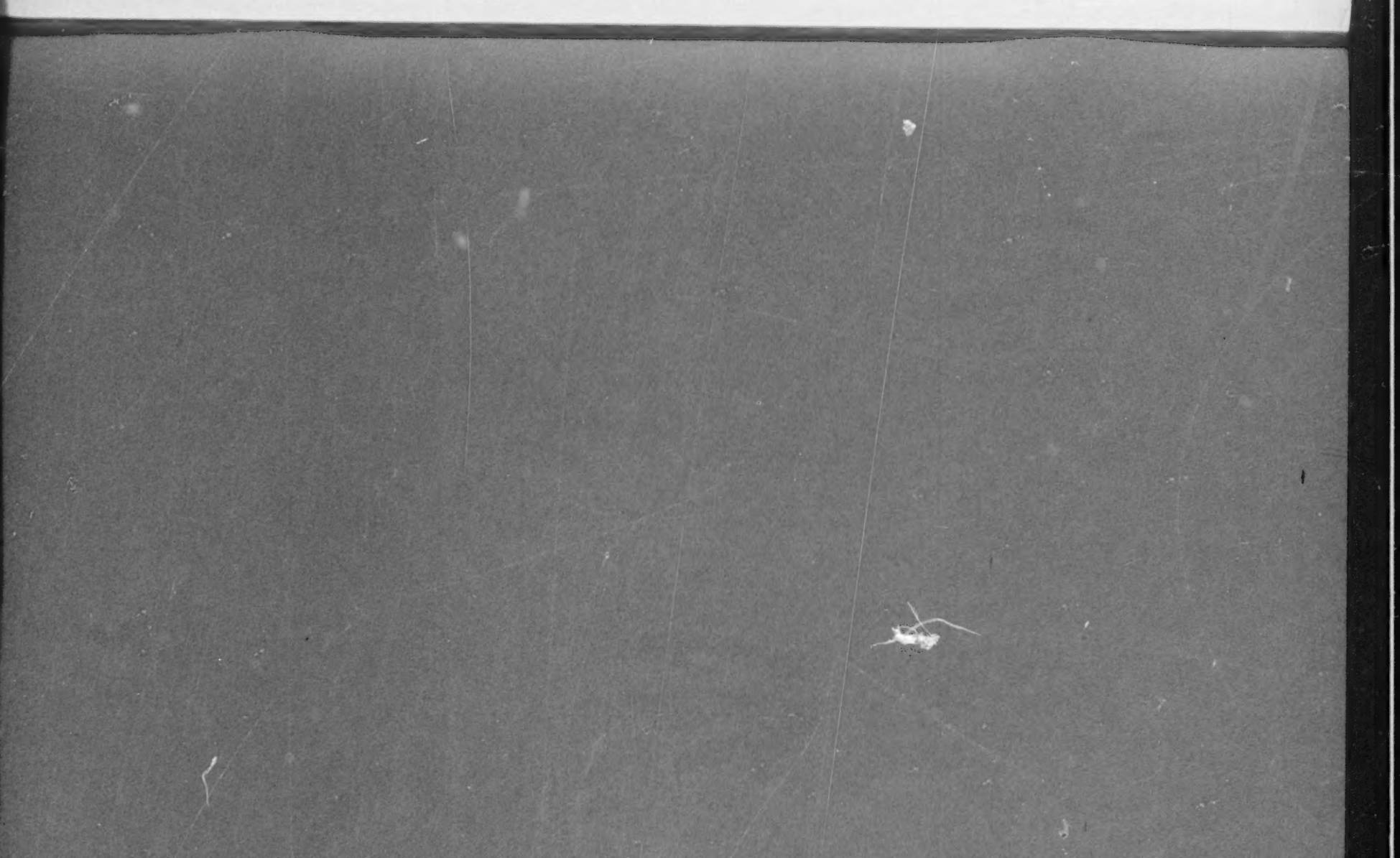

QUESTIONS PRESENTED

Petitioner has presented two questions on appeal to the Court. Respondent is dissatisfied with the questions presented by Petitioner due to the fact that neither question is reviewable by the Court in this matter. The sole issue to be presented is not whether the Oklahoma Supreme Court erred, but whether the United States Supreme Court may review a decision of a state court that is based solely and independently upon state law. As evident from the argument contained herein, the Court clearly may not.

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CONSTITUTIONAL PROVISIONS

Petitioner claims the Court has jurisdiction in this matter pursuant to 23 U.S.C. § 1257 (a). Title 23 of the United States Code does not contain a section 1257. Indeed, title 23, itself, is concerned with highways and not jurisdiction. Respondent assumes that Petitioner claims jurisdiction under 28 U.S.C. § 1257 (a). In any event, as further evidenced through the argument herein, neither title 23 nor title 28 can overcome the overwhelming fact that the Oklahoma Supreme Court did not decide a question of, nor base its decision on, federal law.

The other United States Code provisions cited by Petitioner, 28 U.S.C. §§ 2674 and 2679, relate to the Federal Tort Claims Act. Respondent is dissatisfied with Petitioner's reference to the Federal Tort Claims Act as it does not apply and is not proper for persuasive support.

STATEMENT OF THE CASE

Petitioner has filed her Petition for Writ of Certiorari in an attempt to gain this Court's review of an issue decided on purely state law grounds. The cause was originally filed in state court, but later removed to the United States District Court for the Western District of Oklahoma by Respondent. After Petitioner argued to have the matter remanded alleging no federal jurisdiction, this case was remanded to state court by the United States District Court for the Western District of Oklahoma. After remand, the case was summarily disposed of by the state district court. This disposition was affirmed by the Court of Civil Appeals and subsequently the Oklahoma Supreme Court denied certiorari.

ARGUMENT

There is plainly no cause for the Court's review of this matter. Petitioner presents two propositions in her Petition, neither of which correctly support her argument for review. The state district court's opinion solely rested upon state law. Petitioner's attempt to disguise this fact fails in every respect. Petitioner's barrage of federal case law and statutes are

inadequate to bring this matter within the Considerations Governing Review on Writ of Certiorari in Rule 10 of the United States Supreme Court Rules.

A. Petitioner's propositions fail to overcome the fact that the Oklahoma Supreme Court's decision was based solely and independently upon state law.

Rule 10 of the United States Supreme Court Rules provides three situations in which a petition for writ of certiorari will be granted. The first situation, (a), is clearly inapplicable because a United States court of appeals has not rendered a decision in this case. The other situations are also inapplicable due to the fact that no important federal questions have been decided (although, the three situations listed in Rule 10 "neither control[ ] nor fully measure[e] the Court's discretion." U. S. S. Ct. R. 10.).

The United States Supreme Court has had occasion to address situations in which review is sought of a state court decision. In Braxton v. U.S., 500 U.S. 344, 347, 111 S. Ct. 1854, 1857, 114 L. Ed. 2d 385 (1991), the Court stated the main purpose for using certiorari jurisdiction "is to resolve

conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." The Court in Leavitt v. Jane L., 116 S. Ct. 2068, 2072, 135 L. Ed. 2d 443 (1996), stated, "we do not ordinarily grant petitions for certiorari solely to review what purports to be an application of state law." The Court in Leavitt further suggested that petitions for certiorari should be granted "where the alternative is allowing blatant federal-court nullification of state law." Leavitt at 2072. This Court has set forth specific requirements for reviewing state court judgments when no federal court has been involved. Such review may only be entertained when the state court bases its decision on federal law. Illinois v. Rodriguez, 497 U.S. 177, 182, 110 S. Ct. 2793, 2798, 111 L. Ed. 2d 148 (1990). Even still, the decision must have been dependent on federal law and not independently supported by state law:

> In Coleman v. Thompson, 501 U.S. 722, 729, 111 S. Ct. 2546, 2553, 115 L. Ed. 2d 640 (1991), we reaffirmed that this Court "will not review a question of federal law decided by a state court if the decision of that court

> rests on a state law ground that is independent of the federal question and adequate to support the judgment." . . . We in fact lack jurisdiction to review such independently supported judgments on direct appeal: since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory.

Lambrix v. Singletary, 117 S. Ct. 1517, 1522 (1997) (citing Herb v. Pitcairn, 324 U.S. 117, 125-26, 65 S. Ct. 459, 462-64, 89 L. Ed. 2d 789 (1945)). This rule requiring a decision dependent upon a federal question "applies whether the state law ground is substantive or procedural." Coleman v. Thompson, 501 U.S. 722, 729, 111 S. Ct. 2546, 2553-54, 115 L. Ed. 2d 640 (1991).

The Supreme Court's justification for not reviewing decisions of state law have also been expressed in the opinions addressing certiorari review. In Michigan v. Long, 463 U.S. 1032, 1039, 103 S. Ct. 3469, 3475, 77 L. Ed. 2d 1201 (1983), the Court reasoned, "[t]he process of examining state law is unsatisfactory because it requires us to interpret state laws with

which we are generally unfamiliar." Further, the Court in Schad v. Arizona, 501 U.S. 624, 636, 111 S. Ct. 2491, 2499, 115 L. Ed. 2d 555 (1991), referred to the "fundamental principle that we are not free to substitute our own interpretations of state statutes for those of a state's courts." Neither the principles behind certiorari review, nor the applicable rules that govern the Supreme Court's appellate jurisdiction provide support for Petitioner's position.

Petitioner presents two reasons for granting certiorari in this matter. Petitioner's first proposition states that the Oklahoma Supreme Court unconstitutionally applied the Governmental Tort Claims Act in a way conflicting with decisions of this Court. In her second proposition, which is necessarily related to the first, Petitioner states that the Oklahoma Supreme Court has determined that Petitioner is not entitled to certain constitutional rights. Petitioner cannot, facially, create a federal question which does not actually exist.

1. Petitioner's first proposition fails to support her Petition for Writ of Certiorari.

In her first proposition, Petitioner, through Subproposition 1A and 1B, claims that the Oklahoma Supreme Court unconstitutionally applied the Oklahoma Governmental Tort Claims Act. Petitioner first alleges that § 155 (6) of the Oklahoma Governmental Tort Claims Act, Okla. Stat. tit. 51, § 151 et seq., does not apply to the deputies' conduct. Furthermore, Petitioner apparently attempts to create a federal question by comparing the Oklahoma Governmental Tort Claims Act and the Federal Tort Claims Act. As Petitioner's Subproposition 1A clearly questions the Oklahoma Supreme Court's interpretation of a state statute and the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., has no application to the matter presently before the Court, Petitioner's proposition fails to support her Petition for Certiorari Review.

The Oklahoma Supreme Court, by denying review of Petitioner's cause, affirmed the lower court's decision regarding application of a state statute. The decisions of the Oklahoma Supreme Court, Oklahoma Court of Civil Appeals and Pottawatomie County District Court involved purely state law; specifically, the decisions involved an application and

interpretation of Okla. Stat. tit. 51, § 155 (6). Pursuant to Schad v. Arizona, 501 U.S. at 636, 111 S. Ct. at 2499, the interpretation of state law is left to the state courts. Petitioner's Subproposition 1A fails in this respect.

Petitioner's Subproposition 1B claims that the Oklahoma Supreme Court failed to follow the standard for determining liability of non-exempted acts. The Oklahoma Supreme Court, in essence, determined that the Defendants/Respondents were not liable due to the exemption contained in § 155 (6) of the Oklahoma Governmental Tort Claims Act. This proposition must also fail due to the fact that the issues decided by the Oklahoma Supreme Court were based upon purely state law. Petitioner further attempts to overcome this fact by comparing the Federal Tort Claims Act and case law interpreting the Federal Act.

The Oklahoma Governmental Tort Claims Act has no connection with the Federal Tort Claims Act, outside of the basic purpose behind the acts' enactments. The Federal Tort Claims Act applies to acts or conduct relating to federal agencies. See generally 28 U.S.C. § 2671. The Oklahoma

Governmental Tort Claims Act provides for liability and exemptions from liability to state or political subdivisions. Okla. Stat. tit. 51, § 153. It is clearly unnecessary to conduct an examination into which act applies in our situation. Any discussion of the Federal Tort Claims Act in the matter presently before the Court would be ineffectual.

Petitioners have presented case law and statutory provisions relating to the Federal Governmental Tort Claims Act for persuasive support. However, they have not pointed to any provisions of the Federal Tort Claims Act that are similar to § 155 (6) of the Oklahoma Governmental Tort Claims Act. As such, it can hardly be argued that any interpretation of § 155 (6) of the Oklahoma Governmental Tort Claims Act will affect the Federal Tort Claims Act. Petitioner's interjection of the Federal Tort Claims Act in this matter is inappropriate.

Petitioner's first proposition only emphasizes Respondent's point, i.e., there are no federal issues on which this matter was decided. The responsibility of interpreting state law is left to the state courts. Section 155 (6) of the Oklahoma Governmental Tort Claims Act is such a state law. Whether the

Oklahoma Supreme Court's decision is contrary to the Federal Tort Claims Act is irrelevant. The Federal Tort Claims Act does not apply, nor does it contain a provision parallel to Section 155 (6).

2. Petitioner's second proposition is untimely, especially in light of the fact that she abandoned any federal claims in her argument to remand.

In her second proposition, Petitioner claims that she was denied certain constitutional rights by the Oklahoma Supreme Court. This proposition is completely without merit. Indeed, Petitioner completely abandoned any equal protection or Fourth Amendment claim when she vigorously argued that the matter be remanded to state court[1], Petitioner's assertion of a federal issue is not timely and, similarly, should be denied.

---

[1]In Petitioner's Motion to Remand and Brief, she argued that her cause of action arose under the Oklahoma Constitution and Oklahoma law. Petitioner further claimed, "There are no separate or independent claims that are removable if sued upon alone." (A. 1, Motion to Remand and Brief). A fact recognized by the Oklahoma Court of Civil Appeals in its Memorandum Opinion affirming the state district court's grant of summary judgment.

In Adams v. Robertson, 117 S. Ct. 1028, 1029 (1997), this Court noted:

> [W]e have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.

Furthermore, the Court stated, "When the highest state court is silent on a federal question before us, we assume that the issue was not properly presented." Adams at 1029. Petitioner bears the burden of overcoming this assumption. Id. In this respect, Petitioner has failed.

Petitioner specifically alleged that the issues in this matter relate to state statutes and state concerns. Petitioner is now attempting to gain review by the United States Supreme Court of a decision by the Oklahoma Supreme Court regarding the interpretation of state law- an attempt contrary to the United States Supreme Court Rules and opinions. See Monks v. New Jersey, 398 U.S. 71, 90 S. Ct. 1563, 26 L. Ed. 2d 54 (1970) (petitioner could not raise issue of unconstitutional application

of state statute for the first time on writ of certiorari when state court had no opportunity to pass upon it). Thus, Petitioner's Petition for Certiorari must fail.

Additionally, the fact that this matter does not involve any federal issues is curiously emphasized in reference to Rule 14 of the Rules of the Supreme Court. Rule 14(1)(g)(i) requires that the Petitioner, in seeking review of a state court judgment, reference "when the federal questions sought to be reviewed were raised." In this case, Petitioner has failed to address this requirement in her Statement of the Case and Appendix (U. S. S. Ct. R. 14(1)(i)(v)). Indeed, as previously noted, Petitioner completely abandoned any federal claims and, thus, cannot not fulfill this requirement.

Petitioner's second proposition is untimely. Petitioner has blatantly attempted to urge federal issues that she expressly abandoned at the trial court level. The Oklahoma Supreme Court did not make its decision on any federal grounds. Petitioner is simply left with a decision by the highest state court that rests, independently, on an interpretation of state law.

CONCLUSION

As evident in the record, and specifically noted in the Court of Civil Appeals' opinion, this case involves a question of state law regarding Okla. Stat. tit. 51, § 155 (6). Furthermore, any federal questions presented by Petitioner have no effect on the state court's decision. See Int'l Longshoremen's Ass'n, AFL-CIO v. Davis, 476 U.S. 380, 106 S. Ct. 1904, 90 L. Ed. 2d 389 (1986) (Supreme Court has no authority to review state determinations of purely state law, nor may it review federal issues that can have no effect on state court's judgment). Neither of Petitioner's propositions support her claim to the contrary. For the reasons given above, Petitioner's Petition for Writ of Certiorari should be denied.

Dated: September 28, 1998

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, to be admitted to practice before the Supreme Court of the United States effective August 7, 1998 hereby certifies that on September 29, 1998, three copies of the foregoing Brief in Opposition were served, by certified mail, postage prepaid, to the following counsel of record for Petitioner:

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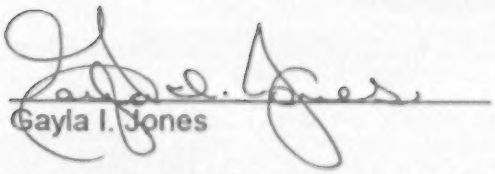

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APPENDIX

Motion to Remand and Brief, Filed on May 15, 1997. . . . . A.1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SOFIA E. FOWLER, Plaintiff,	)	
vs.	)	No. CIV-97-0750 M
THE BOARD OF COUNTY COMMISSIONERS OF POTTAWATOMIE COUNTY, OKLAHOMA, DEPUTY SHERIFF CHRIS HURLEY AND DEPUTY SHERIFF MICHAEL FOWLER, EMPLOYEES OF THE POTTAWATOMIE COUNTY SHERIFF'S DEPARTMENT, Defendants.	)	(Filed May 15, 1997)

MOTION TO REMAND AND BRIEF

Plaintiff moves for an Order remanding this cause to the District Court of the Twenty-Third Judicial District, Pottawatomie County, Oklahoma, and in support of this motion states as follows:

1. Defendants, on May 6, 1997, filed their Notice and Petition of Removal of this cause from the ~~District Court~~ of the Twenty-Third Judicial District, Pottawatomie County, Oklahoma.

2. In their Notice and Petition for Removal, Defendants stated that this cause arose under the Constitution, laws, or

treaties of the United States.

3. The Defendants alleged that this cause of action was removable to the Federal District Court under the provisions of 28 U.S.C. § 1441 et seq.

4. This cause of action is not subject to the original jurisdiction of the Federal District Court under the provisions of 28 U.S.C. § 1331, because the Plaintiff's causes of action arose under the Oklahoma Constitution and laws.

5. There are no separate or independent claims that are removable if sued upon alone.

6. Further, based on the foregoing this cause was therefore improperly removed to this Court and should be remanded to the District Court of the Twenty-Third Judicial District, Pottawatomie County, Oklahoma.

WHEREFORE, Plaintiff SOFIA E. FOWLER, prays for an Order from this Court remanding Plaintiff's causes of action to the District Court of the Twenty-Third Judicial District, Pottawatomie County, Oklahoma for further proceedings and an Order awarding Plaintiff costs incurred in this Court by reason of the removal.

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